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REPORT ON RECENT ETS  
AND IAQ DEVELOPMENTS

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February 5, 1993

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## — IN THIS ISSUE —

IN THE UNITED STATES

## REGULATORY AND LEGISLATIVE

- Articles report on scientific criticism of EPA Risk Assessment on ETS, p. 1.
- "PRO-KIDS" and "PRO-FEDS" legislation are introduced in the U.S. Senate, p. 1.
- BOMA passes resolution supporting federal ban on workplace smoking, p. 2.
- NIOSH logs over 27,000 calls after October SBS news story; usually gets 150 a year, p. 2.
- Activity in state and local governments begins on p. 3.

ETS-RELATED LITIGATION AGAINST  
CIGARETTE MANUFACTURERS

- Latest activity in *Broin*, p. 5.

ETS/IAQ LITIGATION NOT INVOLVING  
CIGARETTE MANUFACTURERS

- Two prisoner cases are decided, *Hemphill* and *Cookish*, p. 6.

## LEGAL ISSUES AND DEVELOPMENTS

- "Children are Focus in a War to Snuff Secondhand Smoke," p. 6.

## SCIENTIFIC/TECHNICAL ITEMS

- Two upcoming IAQ conferences, p. 6.
- "Pulmonary Effects of Environmental Tobacco Smoke Exposure on Asthmatic Subjects," p. 8.
- Centers for Disease Control study on cotinine levels in 23,000 persons, p. 8.

## OTHER DEVELOPMENTS

- Customer allegedly stabs waiter to death over smoking, p. 9.

## MEDIA COVERAGE

- "When Your Office Calls in Sick," p. 9.

IN EUROPE & AROUND THE WORLDETS-RELATED LITIGATION AGAINST  
CIGARETTE MANUFACTURERS

- Report on post-decision hearing in *TIA v. AFCO*, p. 9.
- Veronica Bland receives settlement in claim against her U.K. employer, p. 10.

## LEGAL ISSUES AND DEVELOPMENTS

- Tobacco companies make submission to legal aid in Australia, p. 11.
- Legal aid granted to nonsmoker in the U.K., p. 11.

## SCIENTIFIC/TECHNICAL ITEMS

- Six new studies on respiratory diseases and conditions in children, p. 11.
- "Biological Evidence of Significant Exposure to Tobacco Smoke in Children of Smoking Parents," p. 12.

## OTHER DEVELOPMENTS

- Environmental/animal rights group stages execution of a cigarette in Czechoslovakia, p. 13.
- Science museum in the U.K. opens a "Passive Smoking" exhibit, p. 13.

2046361.142

# — TABLE OF CONTENTS —

Issue 40

February 5, 1993

## IN THE UNITED STATES

### REGULATORY AND LEGISLATIVE MATTERS

#### U.S. ENVIRONMENTAL PROTECTION AGENCY (EPA)

- [1] Scientific Criticism of EPA Risk Assessment on ETS Receives Media Attention ..... 1

#### CONGRESS

- [2] Senator Lautenberg Introduces PRO-KIDS and PRO-FEDS Legislation..... 1

#### BOMA

- [3] Building Owners and Managers Vote to Support Workplace Smoking Ban ..... 2

#### WHITE HOUSE

- [4] President and Mrs. Clinton Ban Smoking in White House ..... 2

#### NIOSH

- [5] NIOSH Ceases to Log 800 Number Calls ..... 2

#### U.S. GENERAL ACCOUNTING OFFICE (GAO)

- [6] GAO Study Reports Continuing Dichotomy Between National Health Policy Objectives and Cigarette Export Goals ..... 2

#### ASHRAE

- [7] SSPC-62 Meets During ASHRAE Winter Meeting ..... 2

#### STATE AND LOCAL GOVERNMENTS

- [8] Privacy Legislation ..... 3

- [9] Other State and Local Legislative Activities Related to ETS ..... 3

### ETS-RELATED LITIGATION AGAINST CIGARETTE MANUFACTURERS

- [10] *Blanchard*: Scheduling Conference set for March 3, 1993 ..... 5

- [11] *Broin*: Defendants Respond to Plaintiffs' Second Amended Complaint ..... 5

### ETS/IAQ LITIGATION NOT INVOLVING CIGARETTE MANUFACTURERS

#### GRADUATE SCHOOL EXPOSURE

- [12] *Beckman v. New York City School of Visual Arts* (U.S. District Court, New York) (filed January 16, 1992) ..... 6

#### PRISONER CASES

- [13] *Hemphill v. Gomez*, 1992 U.S. Dist. LEXIS 20031 (U.S. District Court, Northern District, California) (decided December 8, 1992) ..... 6

- [14] *Cookish v. Commissioner, New Hampshire Department of Corrections* (District Court, District of New Hampshire) (filed January 1, 1988) ..... 6

### LEGAL ISSUES AND DEVELOPMENTS

- [15] "Children are Focus in a War to Snuff Secondhand Smoke," C. Scanlan, *The Philadelphia Inquirer*, January 24, 1993 ..... 6

### SCIENTIFIC/TECHNICAL ITEMS

#### UPCOMING MEETINGS

- [16] "Indoor Environment '93: Defining Strategies for Effective Indoor Air Management," Baltimore, Maryland, April 21-23, 1993 ..... 6

- [17] The Sixth Annual National Conference on Indoor Air Pollution, Tulsa, Oklahoma, March 29-31, 1993 ..... 7

#### LUNG CANCER

- [18] Letters to the Editor Regarding "Environmental Tobacco Smoke: The Price of Scientific Certainty," D.M. Burns, *Journal of the National Cancer Institute* 84: 1387-1388, 1992 ..... 7

#### CARDIOVASCULAR ISSUES

- [19] "Reduced Plasma Ascorbic Acid Concentrations in Women Regularly Exposed to Environmental Tobacco Smoke (ETS)," D.L. Tribble and S.P. Fortmann, *Circulation* 86(4): Supplement, 1992 [See Appendix A] ..... 7

#### RESPIRATORY DISEASES AND CONDITIONS — ADULTS

- [20] "Pulmonary Effects of Environmental Tobacco Smoke Exposure on Asthmatic Subjects," S.B. Lehrer, *CIAR Currents* 2(2): 1, 4, 1992 [See Appendix A] ..... 8

#### RESPIRATORY DISEASES AND CONDITIONS — CHILDREN

- [21] "Maternal Age as a Risk Factor for Wheezing Lower Respiratory Illnesses in the First Year of Life," F.D. Martinez, A.L. Wright, C.J. Holberg, W.J. Morgan, and L.M. Taussig, *American Journal of Epidemiology* 136(10): 1258-1268, 1992 [See Appendix A] ..... 8

#### OTHER HEALTH ISSUES

- [22] "Clinical Ecology," Council on Scientific Affairs, American Medical Association, *Journal of the American Medical Association* 268(24): 3465-3467, 1992 [See Appendix A] ..... 8

2046361143

<b>ETS EXPOSURE AND MONITORING</b>	
[23] "Preliminary Data: Exposure of Persons Aged $\geq 4$ Years to Tobacco Smoke — United States, 1988-1991," <i>Centers for Disease Control, Morbidity and Mortality Weekly Report</i> 42(2): 37-38, 1993 [See Appendix A] .....	8
<b>OTHER DEVELOPMENTS</b>	
[24] Restaurant Customer Faces Murder Charges Following Dispute Over Cigarette Smoking .....	9
[25] California Mall Bans Smoking .....	9
[26] EPA Risk Assessment on ETS Spurs Anti-Smoking Activists in Illinois .....	9
<b>MEDIA COVERAGE</b>	
[27] "When Your Office Calls in Sick," K. Griffin, <i>Health</i> , January/February 1993 .....	9
[28] "The Architecture of Illness," D. Steinman, <i>Vegetarian Times</i> , January 1993 .....	9
<b>IN EUROPE &amp; AROUND THE WORLD</b>	
<b>ETS-RELATED LITIGATION AGAINST CIGARETTE MANUFACTURERS</b>	
<b>AUSTRALIA</b>	
[29] <i>Tobacco Institute of Australia Ltd. v. Australian Federation of Consumer Organisations Inc.</i> (Full Federal Court, New South Wales District Registry, Australia) (decided December 17, 1992) .....	9
<b>ETS/IAQ LITIGATION NOT INVOLVING CIGARETTE MANUFACTURERS</b>	
<b>UNITED KINGDOM</b>	
[30] <i>Veronica Bland v. Stockport Metropolitan Borough Council</i> (Manchester) (writ issued June 14, 1991; settlement entered January 27, 1993) .....	10
<b>LEGAL ISSUES AND DEVELOPMENTS</b>	
<b>AUSTRALIA</b>	
[31] "Australian Court Decision on Passive Smoking Upheld on Appeal," S. Chapman & S. Woodward, <i>British Medical Journal</i> , January 9, 1993 .....	10
[32] Tobacco Companies Submit Memorandum to Legal Aid Board .....	11
<b>UNITED KINGDOM</b>	
[33] Legal Aid Granted to Nonsmoker Suing Employer .....	11
<b>SCIENTIFIC/TECHNICAL ITEMS</b>	
<b>RESPIRATORY DISEASES AND CONDITIONS — CHILDREN</b>	
[34] "Prevalence of Asthma in Swiss Children," F.H. Sennhauser and B.H. Guentert, <i>European Respiratory Journal</i> 5: Supplement, 1992 [See Appendix A] .....	11
[35] "Effect of Age on Urinary Cotinine Level in Young Children," P.N. LeSouef, A.C. Reese, L.I. Landau, and I.R. James, <i>European Respiratory Journal</i> 5: Supplement, 1992 [See Appendix A] .....	12
[36] "Passive Smoking and Children's Diseases," K. Pisiewicz and C. Macura, <i>European Respiratory Journal</i> 5: Supplement, 1992 [See Appendix A] .....	12
[37] "Urinary Cotinine Levels in Primary School Children: Evidence of Exposure to Environmental Tobacco Smoke," E. Dagli, N. Cakan, and A. Araman, <i>European Respiratory Journal</i> 5: Supplement, 1992 [See Appendix A] .....	12
[38] "The Prevalence of Inherited and Environmental Factors in Patients with Asthma," R. Lyons, S. Sreenan, C.K. Power, and C.M. Burke, <i>European Respiratory Journal</i> 5: Supplement, 1992 [See Appendix A] .....	12
<b>UNITED KINGDOM</b>	
[39] "Passive Smoking Exposure and Urinary Cotinine in Relation to Respiratory Health and Bronchial Responsiveness in Adolescents," F. Forastiere, N. Agabiti, V. Dell'Orco, R. Pistelli, G.M. Corbo, G. Brancato, R. Pacifici, P. Zucarro, and C.A. Perucci, <i>European Respiratory Journal</i> 5: Supplement, 1992 [See Appendix A] .....	12
<b>ETS EXPOSURE AND MONITORING</b>	
[40] "Biological Evidence of Significant Exposure to Tobacco Smoke in Children of Smoking Parents," L.M. Galanti and V.M. Godding, <i>Circulation</i> 86(4): Supplement, 1992 [See Appendix A] .....	12
<b>OTHER DEVELOPMENTS</b>	
<b>CANADA</b>	
[41] Montreal Restaurants Ignore No-smoking Law .....	12

<b>CZECHOSLOVAKIA</b>	
[42] Cigarette Executed in Wenceslas Square .....	13
<b>UNITED KINGDOM</b>	
[43] "Passive Smoking" Exhibition Opens at Science Museum .....	13
[44] Nicotine Sensor Badge Developed for Nonsmokers .....	13
[45] Smokers Ignore British Rail's Smoking Ban .....	13
[46] BAT Publishes Workplace Smoking Guide and Smoking Fact Sheet .....	13
<b>WORLD AIRLINE NEWS</b>	
[47] Australia .....	14
[48] China .....	14
[49] Finland .....	14
[50] Iran .....	14
<b>UNITED KINGDOM</b>	
[51] Airplane IAQ to be Investigated .....	14
[52] WHO Releases Report on Tobacco or Health Programme .....	14
APPENDIX A .....	Article Summaries
APPENDIX B .....	PRO-KIDS, PRO-FEDS Bills
APPENDIX C .....	BOMA Resolution
APPENDIX D .....	Museum Exhibition Handouts

2046361145

## REPORT ON RECENT ETS AND IAQ DEVELOPMENTS

### IN THE UNITED STATES

### CONGRESS

#### REGULATORY AND LEGISLATIVE MATTERS

#### U.S. ENVIRONMENTAL PROTECTION AGENCY (EPA)

[1] ♦ Scientific Criticism of EPA Risk Assessment  
on ETS Receives Media Attention

Articles appearing in the *Investor's Business Daily* and *The Washington Times* discuss the criticisms that have been made of the EPA Risk Assessment on ETS by scientists and policy analysts both in and outside the tobacco industry. The criticisms reported in the articles challenge the EPA's conclusions by (i) assailing the method of analysis employed in grouping disparate epidemiological studies to achieve a "meta-analysis," (ii) challenging the accuracy of epidemiological studies in general, and (iii) taking issue with EPA's change in confidence intervals from 95% to 90%.

The editor of *EPA Watch*, consulted for the *Investor's Business Daily* article, is quoted as saying, "It's now open season on whatever contaminant the EPA chooses to label the killer contaminant of the week, with the effect that once again, Americans are going to be stampeded into fearing a substance for reasons which upon close inspection are scientifically indefensible." The writer of *The Washington Times* commentary states that "the EPA should not be treated as an impartial source of scientific truth, . . . With every substance EPA classifies as cancer-causing, the agency increases its budget, gains power and prestige, and opens new vistas for its regulatory activities." See *Investor's Business Daily*, January 28, 1993; *The Washington Times*, January 25, 1993. A columnist for a metropolitan newspaper devoted a column to the *Investor's Business Daily* article. See *The Kansas City Star*, January 30, 1993.

♦ Discussions throughout this Report that bear this symbol contain information about events and activities related to the EPA Risk Assessment on ETS.

[2] ♦ Senator Lautenberg Introduces PRO-KIDS  
and PRO-FEDS Legislation

On January 28, 1993, Senator Frank Lautenberg (D-NJ) introduced two bills that would expand the role of EPA in regulating ETS while establishing nonsmoking policies at a wide range of federally-related programs and buildings.

PRO-KIDS, or the "Preventing Our Kids From Inhaling Deadly Smoke Act of 1993" (S. 261), would require that federally-funded health, social and educational programs for children under the age of 18 prohibit smoking in any portion of any indoor facility providing services to children that is not separately ventilated. A similar measure relating to children under the age of five was introduced in the 102d Congress but failed to pass. See issue 38 of this Report, January 7, 1993.

PRO-FEDS, or the "Preventing Our Federal Building Workers and Visitors From Exposure to Deadly Smoke Act of 1993" (S. 262), would impose the same smoking policy as S. 261 in every building or other structure owned or leased for use by a federal agency of the executive, legislative or judicial branches. The only exception would apply to any area of a building used primarily as living quarters. Provisions of the PRO-FEDS Act recognize the limitations that could be present in collective bargaining agreements, but require that any inconsistencies be overridden by the legislation within one year after issuance of guidelines by EPA or at the expiration of each agreement.

Under both bills, EPA would issue guidelines for instituting and enforcing the nonsmoking policy and would provide information to affected agencies and programs on employee smoking cessation programs and on compliance with the law. Under the PRO-KIDS measure, EPA would also have the authority to issue waivers under specified conditions. The PRO-FEDS legislation requires EPA to establish an "Environmental Tobacco Smoke Advisory Office" within the Office of Radiation and Indoor Air. The ETS

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Advisory office, under the guidance of a director, would: (i) participate in outreach and educational programs; (ii) provide information on the "dangers of environmental tobacco smoke;" (iii) establish a telephone hotline to provide information on the alleged dangers of ETS; and (iv) "carry out any other function of the Office that the [EPA] Administrator determines to be appropriate."

Senator Lautenberg relied to a significant extent upon the EPA Risk Assessment on ETS in justifying the legislation. An EPA press release and newspaper articles discussing the EPA report and the *Kueper* litigation in Illinois were appended to the Congressional Record at the Senator's request. Senator Lautenberg introduced the bills on behalf of himself and Senator Tom Harkin (D-Iowa).

The text of both S. 261 and S. 262 are attached as Appendix B.

## BOMA

### [3] ♦ Building Owners and Managers Vote to Support Workplace Smoking Ban

Citing the EPA Risk Assessment on ETS, the Building Owners and Managers Association International (BOMA) reportedly has passed a resolution by unanimous vote to support a federal ban on smoking in the workplace. A copy of the resolution is attached as Appendix C.

According to the organization's president, EPA's classification of ETS as a "Group A" carcinogen "leaves no doubt that cigarette smoke must be eliminated from the workplace to ensure public health. A national ban on smoking will greatly improve the indoor air quality of the nation's office buildings." The resolution was voted on during BOMA's annual winter business meeting.

BOMA is a trade association which represents the office building industry. Its members reportedly own or manage more than 5 billion square feet of North American office space. The organization presented a seminar series on improving indoor air quality last year in cooperation with the EPA. See *PR Newswire*, January 22, 1993.

## WHITE HOUSE

### [4] President and Mrs. Clinton Ban Smoking in White House

The new President and First Lady have announced they will not allow smoking in the residential and non-office areas of the White House, according to a reported

statement by Hillary Clinton's press secretary. The ban also applies to official White House dinners. Reportedly citing concerns about offending visiting dignitaries, the Clintons have not yet decided whether they will ban smoking at White House business meetings. See *New York Times*, February 3, 1993.

## NIOSH

### [5] NIOSH Ceases to Log 800 Number Calls

According to a press report, NIOSH logged more than 27,000 attempted calls and responded to more than 5,000 requests following a CBS news story on sick building syndrome. See issue 34 of this Report, November 6, 1992. The CBS story, which aired on October 12, 1992, broadcast a toll free NIOSH phone number. The agency stopped logging the calls in mid-December, at which time they had spoken to more than 5,000 persons with alleged IAQ problems in their school or workplace; 27,000 persons were unable to get through clogged phone lines but were recorded by a computer. According to the article, an ASHRAE official said the agency usually handles about 150 calls per year. Even so, he said NIOSH intends to respond to all complaints it received. See *Indoor Air Quality Update*, January 1993.

## U.S. GENERAL ACCOUNTING OFFICE (GAO)

### [6] GAO Study Reports Continuing Dichotomy Between National Health Policy Objectives and Cigarette Export Goals

In a study reportedly released by the GAO on January 5, 1993, it was revealed that the Health and Human Services Department (HHS) has provided assistance to Asian antismoking groups and has supported antismoking programs of international health organizations while, at the same time, HHS officials have participated in cigarette trade talks with Taiwan. The GAO report observes that the U.S. government pursues antismoking policies domestically yet assists U.S. cigarette companies in selling their products abroad. See *International Trade Reporter*, January 13, 1993.

## ASHRAE

### [7] SSPC-62 Meets During ASHRAE Winter Meeting

On January 24, 1993, during the ASHRAE Winter

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Meeting in Chicago, the committee responsible for revising ASHRAE Ventilation Standard 62-1989 considered possible revisions to the standard. The committee's work will continue.

## STATE AND LOCAL GOVERNMENTS

### [8] Privacy Legislation

The term "privacy legislation" refers to state statutes which protect workers who smoke off the job or, more generally, use legal products or engage in legal activities outside the workplace.

#### • Alaska

A bill that would prohibit employers from discriminating against individuals who use legal products in a legal manner outside the workplace was introduced on January 15, 1993, and has been sent to the House Committee on Labor and Commerce. *See* H.B. 62, 18th Legislature — 1st Reg. Sess. (1993).

#### • Montana

The Senate Labor Committee has reportedly unanimously endorsed a bill that would protect employees who use tobacco or alcohol on their own time from discrimination by employers (S.B. 160). The bill would not, apparently, apply to employees of nonprofit groups which discourage the use of alcohol or tobacco and would not apply to life insurance policies. *See Associated Press*, January 22, 1993.

#### • Nebraska

On January 21, 1993, a bill was introduced that would limit certain actions by employers based on a prospective or current employee's use of a lawful product. The measure has been sent to the Legislative Committee on Business and Labor. *See* L.B. 696, 93d Legislature — 1st Reg. Sess. (1993).

#### • Virginia

According to a press report, the legislature will again consider a measure that would prohibit companies from refusing to hire employees who smoke. Similar legislation died in the legislature in 1992, but proponents believe the measure will win passage this year because they have tailored the proposal to address the objections raised a year ago. *See The Washington Post*, January 31, 1993.

### [9] Other State and Local Legislative Activities Related to ETS

#### • Colorado

A bill that would limit the authority of the owners and

operators of private businesses to designate nonsmoking or smoking areas for employees of those businesses was introduced on January 15, 1993, and sent to the House Committee on State, Veterans and Military Affairs. On January 22, 1993, the measure was reported from that committee favorably with amendment. *See* H.B. 1163, 59th General Assembly — 1st Reg. Sess. (1993-94).

#### • Connecticut

The Joint Committee on Labor and Public Employees is considering a measure, introduced on January 15, 1993, that would establish nonsmoking work areas in all business facilities without regard to the number of employees at the facility. *See* H.B. 5836, Reg. Sess. (1993). Another bill was introduced on January 20, 1993, that would require smoke-free areas in all places of employment. *See* H.B. 6185, Reg. Sess. (1993).

#### • Delaware

A measure that would regulate smoking in food markets was introduced on January 21, 1993, and has been sent to the House Committee on Human Needs and Development. *See* H.B. 52, 137th General Assembly — Reg. Sess. (1993-94). Also being considered by that committee is a measure that would regulate smoking in public and private places and in workplaces. *See* H.B. 33, 137th General Assembly — Reg. Sess. (1993-94). In the aftermath of a new policy that prohibits smoking by guards and inmates in state prisons, the legislature is reportedly considering a bill that would require designated smoking areas in prisons. *See* S.B. 14, 137th General Assembly — Reg. Sess. (1993-94); *Philadelphia Inquirer*, January 27, 1993.

#### • Hawaii

Bills that would regulate smoking in childcare facilities during hours of operation, prohibit smoking in certain places open to the public, and define "employer" with respect to smoking policy, were introduced on January 21, 1993. *See* H.B. 81, 97, 98, 216, and 217, 17th Legislative Sess. — 1st Reg. Sess. (1993).

#### • Local Governments in Maryland

In the wake of Governor William Schaefer's executive order banning smoking in state-owned buildings, some county officials are reportedly following his example. Apparently, Carroll, Frederick, Harford, Howard, Montgomery and Worcester counties have banned smoking in county-owned offices. The remaining



counties allow designated smoking areas. *See Baltimore Morning Sun*, January 27, 1993.

• ♦ **Minnesota**

Companion bills that would extend the day care center prohibition on smoking to family or group family day care providers were introduced on January 11, 1993, and have been sent to the Senate Committee on Family Services and the House Committee on Health and Human Services. *See* S.F. 32 & H.F. 29, 78th Legislative Sess. — Reg. Sess. (1993). Another bill reportedly introduced in the House would tighten provisions of the Clean Indoor Air Act by banning smoking in common areas of apartment buildings and condominiums, extending the ban to industrial businesses, clarifying that "public places" includes unoccupied places, permitting smoking in private offices only if independently ventilated, and requiring restaurants to provide enough nonsmoking seats to accommodate all those who request them. The article discussing these bills also notes that antismoking activists in the state have been "emboldened" to push legislation that failed last year by the EPA Risk Assessment on ETS. *See Star Tribune*, January 22, 1993.

• **New Jersey**

In February 1993, the legislature will reportedly consider two bills relating to smoking in restaurants. One bill would phase out smoking altogether in three years, the other would mandate a nonsmoking section in larger restaurants. *See The Sunday Record*, January 24, 1993.

• **New York**

A measure that would direct the Department of Environmental Conservation to establish standards for acceptable indoor air quality applicable to all public buildings within the state was introduced on January 21, 1993, and has been sent to the Assembly Committee on Environmental Conservation. *See* A.B. 1397, 215th General Assembly — 1st Reg. Sess. (1993). A bill that would apply smoking prohibitions to transportation facilities used by pupils regardless of the presence or absence of the pupils on such facilities was introduced on January 11, 1993. The measure was sent to the Assembly Committee on Education and was reported from that committee on January 25, 1993. *See* A.B. 727, 215th General Assembly — 1st Reg. Sess. (1993).

• **North Dakota**

A bill that would designate smoking areas passed the House just two weeks after it was introduced on January 11, 1993. The measure is now before the Senate. *See* H.B. 1246, 53d Legislative Assembly — 1st Reg. Sess. (1993).

• **Oregon**

A bill that will require certain publicly funded facilities to prohibit the use of tobacco on their premises was sent to the House Committee on Education on January 18, 1993. The measure would authorize local government or state agencies to withhold funding upon violation by the covered facility. *See* H.B. 2480, 67th Legislative Assembly — Reg. Sess. (1993).

• **Rhode Island**

A measure that would ban smoking in all restaurants except in lounge areas and that would exempt doughnut shops was introduced on January 21, 1993, and has been sent to the Senate Committee on Health, Education and Welfare. *See* S.B. 86, Reg. Sess. (1993).

• **South Carolina**

A bill that would prohibit smoking in the indoor public areas of all food service establishments was introduced on January 13, 1993, and has been sent to the House Committee on Agriculture and Natural Resources. *See* H.B. 3113, Statewide Sess. (1993).

• **Local Governments in Texas**

The Arlington City Council has reportedly tentatively approved a partial ban on smoking at the new Texas Rangers ballpark which will open in 1994, and at Six Flags over Texas and other outdoor facilities. A \$1,000 fine will be imposed on violators of the ordinance. Council members also reportedly agreed to study broadening the ban to include private businesses. *See United Press International*, January 27, 1993.

• **Utah**

A measure that would require business establishments with smoking areas to provide information regarding the alleged health hazards of ETS to employees was introduced on January 21, 1993. A measure that would amend the Indoor Clean Air Laws and provide procedures regarding designated smoking areas was introduced and sent to the House Committee on Rules on January 18, 1993. *See* S.B. 67 and H.B. 53, 50th Legislature — General Sess. (1993). According to press reports, these amendments would give Utah the

nation's strictest regulation of smoking in public places. Apparently, the bill would allow smoking in bars, restaurants, offices and other public places only if smokers are physically walled off from nonsmokers in areas that are served by independent ventilation systems. Private club owners say they are opposed to the legislation because it is cost prohibitive. See *Greenwire*, January 22, 1993.

◆ ♦ **Virginia**

According to press reports, the Virginia General Assembly is considering a measure that would tighten smoking restrictions already in place under the Indoor Clean Air Act. Antismoking legislators are reportedly using the EPA Risk Assessment on ETS to support their claims of health hazards. The proposed bill would reportedly eliminate virtually all workplace smoking except where nonsmoking areas have separate ventilation; ban smoking in all public indoor areas; require hotels, motels and restaurants to have nonsmoking rooms and areas; permit local governments to pass stricter laws; and increase penalties for businesses and agencies that fail to post no-smoking signs. Another bill would reportedly declare officially that employees have a right to be protected from ETS under the state's worker-safety law. See *The Washington Post*, January 31, 1993.

• **Washington**

A measure that would prohibit smoking in a vehicle which contains any passengers under the age of sixteen was introduced on January 15, 1993, and has been sent to the House Committee on Commerce and Labor. See H.B. 1114, 53d Legislature — Reg. Sess. (1993). According to the sponsor of the bill, the law is intended to educate smokers, but would not be enforced frequently. See *The Seattle Times*, January 22, 1993.

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## ETS-RELATED LITIGATION AGAINST CIGARETTE MANUFACTURERS

[10] *Blanchard*: Scheduling Conference set for March 3, 1993

At the request of plaintiffs, the court has set a scheduling conference for March 3 and has ordered all counsel to meet and discuss scheduling matters on March 2.

Defendants have served interrogatories and requests for production of documents on all named plaintiffs, including those who were most recently added to the action.

The original plaintiffs in this case, Raye Blanchard and Tamara Reed, are mother and daughter. They allege primary-smoking injuries to Raye Blanchard's late husband, Thomas, who allegedly smoked for more than 50 years, and Raye Blanchard herself, who claims she smoked "for about ten years." In addition, Raye Blanchard and Tamara Reed both claim damages for unspecified "illness and disease" allegedly resulting from exposure to the ETS from cigarettes smoked by Thomas and Raye Blanchard. Twelve plaintiffs have been added to the case through supplemental and amended petitions. All of the additional plaintiffs' claims appear to relate to active smoking, with one exception. Plaintiff Pamela Kastrin Stephens claims unspecified "lung and respiratory diseases" allegedly caused by exposure to the ETS from the cigarettes smoked by her deceased father. The named defendants are purported to be the six major U.S. cigarette manufacturers, The Tobacco Institute, the Council for Tobacco Research, and a number of wholesalers and retailers. *Blanchard, et al. v. R.J. Reynolds Tobacco Company, et al.* (District Court, Galveston County, Texas) (filed July 31, 1992).

[11] *Broin*: Defendants Respond to Plaintiffs' Second Amended Complaint

All of the defendants filed their responses to plaintiffs' second amended complaint on January 22, 1993. All responses were in the form of motions to dismiss, although the grounds for the motions varied.

Defendants have requested an extension of time within which to file their reply brief in the dismissal of class action allegations appeal. If granted, the brief will now be due on March 8.

At issue in this case are the claims of 30 flight attendants allegedly injured by occupational exposure to ETS. The injuries alleged by the putative class representatives include lung cancer, breast cancer and unspecified respiratory ailments. The defendants are purported to be the six major U.S. cigarette manufacturers (plus related entities), United States Tobacco Co., Dosal Tobacco Corp., the Council for Tobacco Research, The Tobacco Institute, and three other trade associations. *Broin, et al. v. Philip Morris, et al.* (Circuit Court, Dade County, Florida) (filed October 31, 1991).

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## ETS/IAQ LITIGATION NOT INVOLVING CIGARETTE MANUFACTURERS

### GRADUATE SCHOOL EXPOSURE

- [12] *Beckman v. New York City School of Visual Arts* (U.S. District Court, New York) (filed January 16, 1992)

On January 22, 1993, the mediator filed a report stating that court-ordered mediation had been unsuccessful in resolving any issue in the case and that the unresolved issues should be treated as if they had not been sent to mediation. In this case, Melissa Beckman alleges that she had to take a medical leave of absence from the graduate school because ETS exposure allegedly caused her to suffer "repeated blackouts, frequent vomiting, high fevers, infections, weight gain, mood swings and other physical and emotional trauma." Beckman has requested \$5 million in actual damages, \$5 million in punitive damages, and an injunction to eliminate smoke in the school.

### PRISONER CASES

- [13] *Hemphill v. Gomez*, 1992 U.S. Dist. LEXIS 20031 (U.S. District Court, Northern District, California) (decided December 8, 1992)

A U.S. District Court judge has dismissed the claims made by nonsmoking state prison inmates who alleged violations of constitutional rights after prison officials failed to honor their cell change requests. The inmates had styled their action as a "class action" suit and had sought damages of \$175,000.

The court, however, issued an order dismissing the action without prejudice to an amendment of the complaint for plaintiffs to allege that the "defendants as supervisors failed to properly train or supervise personnel, resulting in the harm to plaintiffs; or that defendants had an official policy or custom which resulted in the harm; or that defendants knew of the alleged misconduct and failed to act to prevent the misconduct." The plaintiffs were given 30 days in which to amend their complaint.

- [14] *Cookish v. Commissioner, New Hampshire Department of Corrections* (District Court, District of New Hampshire) (filed January 1, 1988)

On January 6, 1993, the U.S. District Court dismissed this action stating the plaintiff had "voluntarily

escaped" from prison and had therefore abandoned the opportunity to prosecute his civil claims. Plaintiff's current whereabouts are apparently unknown and he had missed several court filing deadlines. Cookish brought his claim against prison officials based on allegations that ETS exposure subjected him to cruel and unusual punishment and deprived him of his liberty interest without due process.

## LEGAL ISSUES AND DEVELOPMENTS

- [15] ♦ "Children are Focus in a War to Snuff Secondhand Smoke," C. Scanlan, *The Philadelphia Inquirer*, January 24, 1993

Discussing the EPA Risk Assessment on ETS, this article focuses on alleged health effects of ETS exposure on children. John Banzhaf, director of ASH, and Joseph LaMacchia, founder of Parents Against Secondhand Smoke (PASS), are quoted in the article for their views on protecting children from ETS in the home and in public places. According to LaMacchia, who last year fought a court battle to prevent his ex-wife from smoking in the presence of their son, his goal is "to clog the court system with these cases. All the information is in, but because of neglectful, incompetent parents these kids have to suffer in smoke when they don't want to."

The views of the tobacco industry are also included in the article, and information is provided to readers to contact agencies and organizations offering brochures and packets of material on ETS.

## SCIENTIFIC/TECHNICAL ITEMS

### UPCOMING MEETINGS

- [16] "Indoor Environment '93: Defining Strategies for Effective Indoor Air Management," Baltimore, Maryland, April 21-23, 1993

Sponsored by five indoor air quality publications, the conference invites IAQ professionals, building managers, scientists and environmental lawyers to participate in discussions covering the "entire spectrum of indoor

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air quality related issues." Sessions will include public programs and policy, building management, issues in detection and mitigation, safety and health, and litigation and liability. The safety and health session includes presentations on "ETS: Health Effects and Recent Research," "Sick Building Syndrome: Precedents, Current Litigation, and Predictions," and "Workers Compensation and IAQ."

- [17] The Sixth Annual National Conference on Indoor Air Pollution, Tulsa, Oklahoma, March 29-31, 1993

The University of Tulsa will host this conference, which will focus on IAQ issues such as indoor air diagnostics, federal IAQ policies and research, and legal implications of sick building syndrome. Scheduled speakers include Robert Axelrad, Helen Eisenstein, Mark Mason and Harriet Burge.

### LUNG CANCER

- [18] Letters to the Editor Regarding "Environmental Tobacco Smoke: The Price of Scientific Certainty," D.M. Burns, *Journal of the National Cancer Institute* 84: 1387-1388, 1992

The *Journal of the National Cancer Institute* recently published two letters concerning this editorial, published at the same time as the Stockwell, et al., case-control study on ETS exposure and lung cancer in nonsmoking women. As discussed in Issue 31 of this Report, September 25, 1992, the author, David M. Burns, called for the development of public policies based on his belief that a causal relationship between ETS exposure and lung cancer has been "clearly established." Dr. Burns is an antismoking activist and a member of the EPA's Science Advisory Board committee that reviewed the Draft Risk Assessments on ETS. The first letter in the current correspondence is from Gio B. Gori, and is followed by a reply from Burns. The letters appear in *Journal of the National Cancer Institute* 85(1): 66-67, 1993.

Gori comments that Burns' original article suggests that "either the editorialist [Burns] did not read the report carefully or his perception of certainty is a

curious one." Gori writes that Stockwell, et al., referred to suggestion, rather than certainty, in their article. He also points out "incongruities" of ETS epidemiologic studies. In particular, Gori states that the odds ratios reported by Stockwell, et al., "vary from apparent protection to apparent risk," and that the reported results on adenocarcinoma "conflict with the much quoted and larger study of Fontham et al." Gori continues with a reference to potential confounding variables, biases, uncertainties in exposure estimates, and other problems, which he characterizes as "weaknesses of epidemiologic data." Gori suggests that epidemiology should not be "interpreted in an equivocal dialectic context," calling the certainty referred to by Burns "an assertive policy proposition."

In his response, Burns describes Gori's letter as "a fine example of the 'reasoning' used by the tobacco industry to delay and confuse the development of scientific certainty." Burns writes that neither the Stockwell, et al., study nor his own editorial implied that the Stockwell, et al., study provided sufficient data to reach scientific certainty. He calls for using "multiple lines of evidence and all of the data available" in judging causality. Burns also accuses Gori of an "ad hominem attack suggesting that, because I [Burns] agree with the conclusion of every comprehensive scientific review of these data that has been conducted in the last 7 years, my position must be based on advocacy and cannot be scientific."

### CARDIOVASCULAR ISSUES

- [19] "Reduced Plasma Ascorbic Acid Concentrations in Women Regularly Exposed to Environmental Tobacco Smoke (ETS)," D.L. Tribble and S.P. Fortmann, *Circulation* 86(4): Supplement, 1992 [See Appendix A]

The authors of this abstract propose that a reduction in levels of the vitamin ascorbic acid may be related to the pathogenesis of heart disease. Based on measurements of plasma ascorbic acid concentrations and dietary ascorbic acid intake in nonsmoking women, the authors report that "passive smokers" had lower plasma ascorbic acid levels, which they suggest "may contribute to increased heart disease risk associated with ETS exposure."

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## RESPIRATORY DISEASES AND CONDITIONS — ADULTS

- [20] "Pulmonary Effects of Environmental Tobacco Smoke Exposure on Asthmatic Subjects," S.B. Lehrer, *CIAR Currents* 2(2): 1, 4, 1992 [See Appendix A]

This article reports on a test chamber developed by a research team at Tulane University, in which asthmatics claiming smoke-sensitivity were exposed to sidestream smoke as a surrogate for ETS. The author reports that only 10 percent (17 out of 163 subjects) "reacted" to sidestream smoke at high smoke levels, corresponding to ETS concentrations that "would be extreme and rarely encountered" in actual environments.

## RESPIRATORY DISEASES AND CONDITIONS — CHILDREN

- [21] "Maternal Age as a Risk Factor for Wheezing Lower Respiratory Illnesses in the First Year of Life," F.D. Martinez, A.L. Wright, C.J. Holberg, W.J. Morgan, and L.M. Taussig, *American Journal of Epidemiology* 136(10): 1258-1268, 1992 [See Appendix A]

This report, part of the Tucson Children's Respiratory Study, reports that maternal age is related to the incidence rate of wheezing lower respiratory infections. Namely, such infections are reportedly more frequent in the offspring of younger mothers. The authors also report a statistically significant odds ratio for maternal smoking as an independent risk factor for wheezing lower respiratory infections. The lead author of the study, Fernando D. Martinez, was a major contributor to the EPA Risk Assessment's section on childhood respiratory diseases and conditions.

## OTHER HEALTH ISSUES

- [22] "Clinical Ecology," Council on Scientific Affairs, American Medical Association, *Journal of the American Medical Association* 268(24): 3465-3467, 1992 [See Appendix A]

This Council Report, by the American Medical Association, discusses multiple chemical sensitivity

syndrome (MCSS), chronic fatigue syndrome, and sick building syndrome, as well as the branch of treatment called clinical ecology. The authors conclude that no studies have established a mechanism or cause for MCSS or have confirmed the efficacy of methods advocated by clinical ecologists. They also recommend that the literature on these topics should be monitored and call on practitioners of clinical ecology to prove the effectiveness of new treatments by controlled clinical trials.

## ETS EXPOSURE AND MONITORING

- [23] ♦ "Preliminary Data: Exposure of Persons Aged ≥4 Years to Tobacco Smoke — United States, 1988-1991," Centers for Disease Control, *Morbidity and Mortality Weekly Report* 42(2): 37-38, 1993 [See Appendix A]

This preliminary report by researchers at the Centers for Disease Control (CDC) has received extensive press coverage. It reports on initial results of assays for blood serum levels of cotinine, a metabolite of nicotine, in 800 individuals. The study subjects are a subset of a larger group of 23,000 persons being surveyed as part of the Third National Health and Nutrition Examination Survey (NHANES III). A very sensitive assay methodology was employed, and cotinine was reportedly detected in all individuals tested. The article implies that all low levels of cotinine are due to ETS exposure.

Apparently, the CDC's new methodology allows detection of levels of cotinine previously undetectable in many studies. However, the authors do not discuss the possible contribution of diet to cotinine levels. Nicotine is found in small amounts in such vegetables as tomatoes and eggplant, and also in certain forms of tea.

In press reports, Dr. James Pirkle of CDC was quoted as saying about the 100 percent detection level, "we really weren't expecting that." Pirkle also reportedly stated that the CDC research would address criticisms leveled against the EPA Risk Assessment on ETS concerning documentation of numbers of exposed persons and levels of exposure. Pirkle reportedly said that the new methodology "will allow us to figure out the extent of the problem using an objective measure." See *The New York Times*, January 22, 1993.

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## OTHER DEVELOPMENTS

### [24] Restaurant Customer Faces Murder Charges Following Dispute Over Cigarette Smoking

Toby Titus Wade of Sacramento, California, reportedly faces a murder charge after he allegedly stabbed a waiter to death in an argument over smoking. According to police, Wade and the waiter began shouting at each other after Wade lit a cigarette and the waiter told him to stop. A city ordinance reportedly prohibits smoking in restaurants. The confrontation allegedly escalated in a back office and the waiter was found stabbed to death after Wade left the restaurant. See *Los Angeles Times*, January 13, 1993.

### [25] ♦ California Mall Bans Smoking

According to press reports, the South Coast Plaza became one of the first indoor shopping malls in the nation to ban smoking in common areas as of February 1, 1993. Restaurants in the Plaza and food court will evidently keep designated smoking areas open. The impetus for the rule, according to a mall spokeswoman, was the EPA Risk Assessment on ETS. See *Los Angeles Times*, January 26, 1993.

### [26] ♦ EPA Risk Assessment on ETS Spurs Anti-Smoking Activists in Illinois

A health group coalition, lawmakers and state officials reportedly planned to meet in late January to take steps to strengthen Illinois' public smoking law. The current law, which was enacted in 1989, requires restaurants, hotels and other public places to provide nonsmoking areas. Those cities, including Chicago, which passed stricter ordinances before the state law went into effect in 1990, are exempt from the law. Antismoking activists are reportedly seeking a bill that would give municipalities the right to decide where people can smoke in public, if at all, and they will reportedly use the EPA Risk Assessment on ETS as their "main weapon" in an "expected battle" with the tobacco lobby. See *Chicago Tribune*, January 19, 1993; *Greenwire*, January 20, 1993.

## MEDIA COVERAGE

### [27] "When Your Office Calls in Sick," K. Griffin, *Health*, January/February 1993

In this article, staff writer Katherine Griffin discusses

sick building syndrome, its probable causes and health consequences, and possible remediation measures. Focusing on inadequate ventilation, improper maintenance of HVAC systems, and the presence of toxic chemicals and biological contaminants as sources of poor IAQ, the article provides specific recommendations for office workers to document sick building problems and find ways to resolve them. Included are references to EPA publications and a NIOSH hotline. The author notes that the EPA will be publishing a list of private IAQ consultants within the next few months, and observes that such businesses are proliferating "like algae in a drain pan."

### [28] "The Architecture of Illness," D. Steinman, *Vegetarian Times*, January 1993

This article profiles the IAQ problems the EPA had with its Waterside Mall headquarters and discusses sick building syndrome issues. The author addresses causes and effects of poor IAQ and observes that basic HVAC systems maintenance might be the most effective way to reduce exposures to indoor air pollutants. Some of the steps recommended for improving a "sick work space" include bringing in house plants, improving air circulation and ventilation, using nontoxic cleaning products, using a high-efficiency particulate air filter for personal work spaces, organizing other workers and tenants, quitting your job, and filing a lawsuit. The article concludes by reviewing actions that are being taken on the federal and state levels to improve IAQ.

## IN EUROPE & AROUND THE WORLD

### ETS-RELATED LITIGATION AGAINST CIGARETTE MANUFACTURERS

#### AUSTRALIA

### [29] ♦ *Tobacco Institute of Australia Ltd. v. Australian Federation of Consumer Organisations Inc.* (Full Federal Court, New South Wales District Registry, Australia) (decided December 17, 1992)

During a post-decision hearing conducted before the full Federal Court on February 3, 1993, the court

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considered, among other matters, whether it would rely upon the EPA Risk Assessment on ETS in deciding AFCO's request to grant an injunction against public statements by TIA about ETS. The court also heard argument addressing the injunctions imposed by Justice Morling, the appropriateness of the declaratory relief sought by AFCO, the question of costs, and TIA's request for leave to rely on a new submission based on the Australian High Court decisions in cases involving free speech rights. A special report on the *AFCO* decision appears in issue 37 of this Report, December 18, 1992.

The court apparently did not issue a ruling at the conclusion of the hearing. It did, however, take under advisement (i) whether to grant leave to TIA to argue the free speech issue, and (ii) whether to grant leave to AFCO to put on further evidence. The court indicated that it would either relist the matter for further consideration or deal with the issue in its reasons for judgment.

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## ETS/IAQ LITIGATION NOT INVOLVING CIGARETTE MANUFACTURERS

### UNITED KINGDOM

- [30] *Veronica Bland v. Stockport Metropolitan Borough Council* (Manchester) (writ issued June 14, 1991; settlement entered January 27, 1993)

A 36-year-old nonsmoker has reportedly agreed to settle her ETS workplace exposure claim against her employer, the Stockport (UK) Metropolitan Borough Council, for the sum of £15,000 (U.S. \$21,600). The settlement was made out of court without an admission of liability.

The claimant, Veronica Bland, alleged that she had been exposed to ETS from 1979 until a no-smoking policy was implemented in 1990. Bland claimed that she had been forced to share an office with co-workers who smoked up to 150 cigarettes a day and that this caused her to suffer sneezing, coughing, streaming eyes, and ultimately chronic bronchitis. During a press conference held to announce the settlement, Bland reportedly barely raised her voice above a whisper and claimed her once beautiful soprano singing voice was no longer what it had been.

Bland's union, NALGO (National and Local Government Officers' Association), brought the suit on her behalf. Although representatives of NALGO reportedly lauded the settlement and predicted that it would force employers to impose workplace smoking bans to avoid future liability, press reports observed that NALGO does not impose a smoking ban in its own offices.

Media coverage of the settlement has been extensive, with articles appearing in many U.K. publications, and in Australia, the United States and France. Most of the articles acknowledge that the settlement does not create legal precedent, but they suggest that employers will hasten to impose smoking bans to avoid similar litigation. According to ASH, there will be an explosion of such lawsuits in the near future. *See The Independent*, January 28, 1993; *Daily Telegraph*, January 28, 1993; *The Times*, January 28, 1993; *Sunday Telegraph*, January 31, 1993.

It has been reported that members of Parliament are calling for the government to impose workplace smoking bans. Secretary of State for Health Virginia Bottomley, however, has ruled out any legislation before 1995, when voluntary smoking policies are expected to be in place in the majority of workplaces. According to ASH, some 80 percent of large companies currently have a workplace smoking policy. *See The Independent*, January 28, 1993; *Reuter Library Report*, January 27, 1993.

➤ Legal Aid Granted to Nonsmoker Suing Employer, Item 33.

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## LEGAL ISSUES AND DEVELOPMENTS

### AUSTRALIA

- [31] "Australian Court Decision on Passive Smoking Upheld on Appeal," S. Chapman & S. Woodward, *British Medical Journal*, January 9, 1993

Stephen Woodward, executive director of Australia's Action on Smoking and Health (ASH), and Simon Chapman, a lecturer in community medicine at the University of Sydney, submitted this article following the *TIA v. AFCO* decision on December 17, 1992. In it, Woodward and Chapman claim the appeal court found the "critical sentence" in the TIA ad, "And yet there is little evidence and nothing which proves

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scientifically that cigarette smoke causes disease in non-smokers," was misleading and deceptive. Further, they allege that each of the appeal judges were "emphatic" in their ruling, and that Justice Shepherd "vehemently rejected" TIA's claim in the "critical sentence."

Even so, the authors assert, the tobacco industry was handed a "symbolic but fairly meaningless victory in having two orders varied. These concerned matters that were a pure technicality . . . and a virtual truism." Further they stated, "the tobacco industry is unrivalled at making silk purses from sows' ears. It still maintains with blithe equanimity its opinion that active smoking, let alone passive smoking, does not cause disease — it has been shown only to have a 'statistical association,' much in the same way that sexual intercourse might be denied to 'cause' pregnancy."

The authors note that the 148-page opinion of the Federal Court gives "quite priceless advice to the industry about how it might become more clever in the same ambitions that gave birth to this clumsily worded advertisement. Each judge offers advice, often explicit, on how the offending sentence could have been published without falling prey to a misleading and deceptive charge."

Research assistance for the article was provided by the barrister who appeared for AFCO before Justice Morling and for the full Federal Court appeal.

#### [32] Tobacco Companies Submit Memorandum to Legal Aid Board

On January 14, 1993, Philip Morris, Rothmans, and WD & HO Wills reportedly submitted to every state and federal legal aid body a memorandum which attempts to oppose the grant of legal aid in cases which might be brought against cigarette manufacturers by smokers or by those exposed to ETS. Although these "prospective defendants" acknowledge that it is unusual to oppose a grant of legal aid before proceedings have been commenced, they observe that some solicitors have been advertising to recruit claimants for tobacco litigation and that it seemed appropriate to outline relevant issues for legal aid authorities. One of those advertisements appears in issue 25 of this Report, July 7, 1992.

The memorandum makes reference to a newspaper article which refers to a possible common law claim by

West Australia's 120,000 asthmatics with respect to ETS exposure. For a summary of this article, *see* issue 34 of this Report, November 6, 1992. Various arguments are advanced explaining why a "class action" of this sort would not succeed.

### UNITED KINGDOM

#### [33] Legal Aid Granted to Nonsmoker Suing Employer

A Midlands office worker who is planning to sue her employer for damages allegedly caused by ETS exposure has reportedly been granted assistance from the Legal Aid Board. The claimant, a woman in her fifties, apparently claims she developed asthma and bronchitis after working for five years in an office in which smoking was permitted.

Lawyers are reportedly predicting that there will be a flood of legal claims against employers and parents for ETS exposure in the wake of the Veronica Bland settlement. A barrister with Leigh Day and Company said he has had several preliminary inquiries from people who want to sue their parents. *See The Independent*, January 31, 1993.

Applications for legal aid submitted by smokers wishing to sue cigarette manufacturers have been denied.

► Veronica Bland Settlement, Item 30.

### SCIENTIFIC/TECHNICAL ITEMS

#### RESPIRATORY DISEASES AND CONDITIONS — CHILDREN

- [34] "Prevalence of Asthma in Swiss Children," F.H. Sennhauser and B.H. Guentert, *European Respiratory Journal* 5: Supplement, 1992 [See Appendix A]

This abstract, presented at the European Respiratory Society meeting in 1992, reports on a study to determine the prevalence of childhood asthma in Switzerland. Reportedly, the prevalence of nighttime symptoms, such as cough, chest tightness, and wheezing, was significantly higher in children of families with smokers.

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- [35] "Effect of Age on Urinary Cotinine Level in Young Children," P.N. LeSouef, A.C. Reese, L.I. Landau, and I.R. James, *European Respiratory Journal* 5: Supplement, 1992 [See Appendix A]

These Australian researchers investigate the hypothesis that the reported association between parental smoking and respiratory illness in infants is due to increased exposure rather than to claimed increased lung sensitivity. They claim to have found an inverse relationship between urinary cotinine levels and age; that is, younger children (0-2 years) reportedly had cotinine levels strongly associated with the number of cigarettes smoked by their parents.

- [36] "Passive Smoking and Children's Diseases," K. Pisiewicz and C. Macura, *European Respiratory Journal* 5: Supplement, 1992 [See Appendix A]

This meeting abstract reports on a study comparing the prevalence of respiratory diseases and symptoms in children living with smokers and nonsmokers in relation to family history of disease. The authors report that "the influence of family history was stronger than that of passive smoking," and attribute this to parents with allergic diseases smoking significantly less.

- [37] "Urinary Cotinine Levels in Primary School Children: Evidence of Exposure to Environmental Tobacco Smoke," E. Dagli, N. Cakan, and A. Araman, *European Respiratory Journal* 5: Supplement, 1992 [See Appendix A]

These Turkish researchers use questionnaire data and urinary cotinine measurements to examine ETS exposure in school children. They conclude that "the dose of nicotine received by Istanbul school children from ETS was estimated to be equivalent to 1 to 5 cigarettes per day."

- [38] "The Prevalence of Inherited and Environmental Factors in Patients with Asthma," R. Lyons, S. Sreenan, C.K. Power, and C.M. Burke, *European Respiratory Journal* 5: Supplement, 1992 [See Appendix A]

Based on questionnaire responses, these researchers in Ireland report that, in their study population, childhood asthma is associated with a family history of asthma or eczema, suggesting an inherited aspect. However, the

authors also suggest that environmental factors are related to asthma, based on reports of associations between asthma and damp housing or ETS exposure.

## UNITED KINGDOM

- [39] "Passive Smoking Exposure and Urinary Cotinine in Relation to Respiratory Health and Bronchial Responsiveness in Adolescents," F. Forastiere, N. Agabiti, V. Dell'Orco, R. Pistelli, G.M. Corbo, G. Brancato, R. Pacifici, P. Zucarro, and C.A. Perucci, *European Respiratory Journal* 5: Supplement, 1992 [See Appendix A]

The authors of this study, conducted in Italy, compare urinary cotinine measures with questionnaire responses concerning several indices of respiratory health. They conclude that urinary cotinine does not provide additional information beyond data produced by questionnaire responses.

## ETS EXPOSURE AND MONITORING

- [40] "Biological Evidence of Significant Exposure to Tobacco Smoke in Children of Smoking Parents," L.M. Galanti and V.M. Godding, *Circulation* 86(4): Supplement, 1992 [See Appendix A]

This abstract, prepared by Belgian researchers, reports that urinary cotinine levels in children are correlated with parents' cotinine levels and with the number of cigarettes reportedly smoked per day. The authors claim to find urinary cotinine levels four times higher in children with smoking parents than in non-smoking adults.

## OTHER DEVELOPMENTS

### CANADA

- [41] Montreal Restaurants Ignore No-smoking Law

According to press reports, nearly 90 percent of Montreal restaurants do not have the number of nonsmoking seats required by law. Since August 1992, restaurants have been required to set aside half of their seats for nonsmokers or risk fines ranging from \$300 to \$1,000. The survey, which also revealed that fully one-

third of restaurants failed to establish any nonsmoking section, was conducted by a city councillor who reported that his researchers found most restaurant owners were unaware of the bylaw requirements. According to city officials, they have done enough to publicize the bylaw by sending inspectors to all 4,000 restaurants in the city and distributing pamphlets and no-smoking signs. See *The Gazette (Montreal)*, January 23, 1993.

## CZECHOSLOVAKIA

### [42] Cigarette Executed in Wenceslas Square

Animal S.O.S., an organization with animal rights and environmental concerns, reportedly staged the execution of a cigarette on old town square in Prague on January 17, 1993. The purpose of the event was apparently to bring attention to the interests of non-smokers, animals and nature. Animal S.O.S. reportedly advocates smoke-free workplaces. See *CTK National News Wire*, January 18, 1993.

## UNITED KINGDOM

### [43] "Passive Smoking" Exhibition Opens at Science Museum

On January 14, 1993, the Science Museum in London held a formal opening of its "passive smoking" exhibition. The assistant director described the exhibition as one in a series intended to cover topical issues of scientific debate which are of interest to the public. A stated aim is to provide a "candid assessment" of the evidence. The exhibition was reportedly produced with the assistance of three "independent" experts, Martin Jarvis, Sir Richard Doll and Professor Nicholas Wald.

The exhibition consists of display stands, wall charts and a device that permits visitors to test the alleged effects of ETS by measuring the amount of carbon monoxide in their breath. Interactive computer terminals provide visitors with an opportunity to take part in an opinion poll on ETS and to get further information from scientific papers. A running display of the average number of people who allegedly die from smoking-related diseases during the course of the exhibition will reportedly be given.

On March 10, 1993, National No Smoking Day, the Museum will have special presentations, a dramatic performance for children, and a "table-top" science day where people can take part in experiments to attempt to show whether they have been affected by cigarette smoke. A sampling of the handouts available at the exhibition are attached as Appendix D.

### [44] Nicotine Sensor Badge Developed for Non-smokers

Bedfont Scientific Limited, a company in Kent, is reportedly developing a lapel badge which changes color when it is impregnated with airborne nicotine. The purported purpose of the badge is to measure the cumulative effect of ETS exposure. According to the company's sales and marketing manager, the badges will be sold within the next few months if tests prove successful. They will be marketed under the name Smoke Check and will cost 84 pounds for a packet of 30. See *The Independent*, January 31, 1993.

### [45] Smokers Ignore British Rail's Smoking Ban

British Rail passengers who smoke are reportedly defying a smoking ban that was imposed on most South of England lines. Some are tearing down penalty notices as soon as they are posted. Others are lighting cigarettes in spite of the ban. On January 22, 1993, a smoker was stabbed and badly wounded when he lit a cigarette in a nonsmoking compartment to the evident chagrin of his nonsmoking assailant. According to Conservative peer Lord Aldington, who reportedly smokes a pipe and rides the train into London from Kent, the ban is a violation of human rights and he is calling upon the government to intervene. See *The Sunday Telegraph*, January 24, 1993.

### [46] BAT Publishes Workplace Smoking Guide and Smoking Fact Sheet

BAT has published a workplace smoking guide that emphasizes a fair and cooperative approach to the development of smoking policies in the workplace. Noting that a total smoking ban may be detrimental to office morale and productivity, the guide urges employers to "handle individual complaints as they occur and at the lowest level of supervision. . . . Simple modifications to the immediate environment . . . might be all that is required. A mutually worked out agreement is the ideal solution."